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SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1962

No. 105

DAGMAR READEY, EDWARD L. GLAUERT, HIRAM SCHMEDEL, CHRIS J. MUCKERMAN, HENRY J. JOHNSON, ROBERT BURKHAM, MIGNON E. DIETRICH, and JACK WELCH, JR.,
Plaintiffs-Appellants,

vs.

ST. LOUIS COUNTY WATER COMPANY, a Corporation,
Defendant,

and

THOMAS C. DUNNE, MAURICE M. ABRAMSON, JOHN J. DOWLING, RICHARD A. HETLAGE, RUSSELL A. GRANTHAM, GEORGE E. BOHRER, JOHN F. MOLLOY, Members of the County Council of the County of St. Louis, Missouri; EDWARD A. WALSH, County Clerk of St. Louis County, Missouri; DR. C. HOWE ELLER, Acting Health Commissioner of the County of St. Louis, Missouri, and Successors in Office,
Defendants-Appellees.

Appeal from the Supreme Court of Missouri.

MOTION TO AFFIRM AND ALTERNATIVE MOTION TO DISMISS WITH SUPPORTING BRIEF BY DEFENDANTS-APPELLEES.

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Defendants-Appellees.

Appeal from the Supreme Court of Missouri.

MOTION TO AFFIRM AND ALTERNATIVE MOTION TO DISMISS APPEAL FROM STATE COURT.

Thomas C. Dunne, Maurice M. Abramson, John J. Dowling, Richard A. Hetlage, Russell A. Grantham, George E. Bohrer and John J. Molloy, as members of the County Council of St. Louis County, Missouri; Edward A. Walsh, County Clerk of St. Louis County, Missouri; Dr. C. Howe Eller, Acting Health Commissioner, St. Louis County, and successors in office, Appellees in the above-entitled cause, pursuant to Rule 16 of the Revised Rules of the Supreme

Court of the United States, move this Court that the final judgment and decree of the Supreme Court of Missouri be affirmed and, in the alternative, that the appeal herein be dismissed upon the following grounds:

1. There is no substantial federal question involved.

2. The decree and judgment of the Supreme Court of Missouri did not draw into question the validity of any state statute on the grounds of its being repugnant to the Constitution of the United States.

3. The real question involved is one of fact and not of law and is not reviewable in this Court.

4. The federal questions sought to be reviewed were not timely or properly raised.

5. The federal questions involved were not passed on by the Supreme Court of Missouri.

6. The judgment of the Supreme Court of Missouri rests on adequate non-federal basis.

BRIEF.

STATEMENT.

This is a direct appeal from the final judgment and decree entered on December 11, 1961, by the Supreme Court of Missouri dismissing Appellant's suit at their cost and reversing a judgment of the Circuit Court of St. Louis County, Missouri, which granted an injunction at the instance of the Plaintiff-Appellants restraining the Defendant-Appellees from carrying out any of the provisions of St. Louis County, Ordinance No. 01480, and further declaring said Ordinance to be void. Ordinance 01480 authorized and directed the St. Louis County Water Company to proceed with the fluoridation of the public water supply of St. Louis County. Ordinance 01480 is found in Appendix D in Appellant's jurisdictional statement and the decision of the Supreme Court of Missouri is found in Appendix A therein and also in 352 S. W. 2d 622.

St. Louis County Water Company is a privately owned company operating under the regulations and supervision of the Public Service Commission of the State of Missouri. The company owns and operates water work plants and other facilities for the distribution and sale of water for individual consumption as well as for sale to incorporated municipalities within St. Louis County and ultimately through those cities for sale to indivjdual consumers. The Appellants are taxpayers of St. Louis County and consumers of water distributed by the company.

The County Council of St. Louis County, Missouri, on May 27, 1959, adopted Ordinance No. 01480, which authorized and directed the St. Louis County Water Company to provide the means to introduce a sufficient quantity of the fluoride ion into the water it furnished County consumers

to maintain throughout the distribution system a fluoride concentration of approximately one part fluoride per million gallons of water. The Ordinance recites that the action was taken after a finding that it was the concensus of scientific, medical and dental opinion that the presence of fluorides in drinking water is a deterrent to tooth decay; also finding that there was an inadequate concentration of such chemical in the natural supply of water to the citizens of St. Louis County; and further finding that fluorides could be introduced into the drinking water supply of St. Louis County as a measure to promote the public health and welfare.

The Appellants attacked the validity of the Ordinance of the County on the ground that it was beyond the power of the County Council; that the Ordinance violates the Fourteenth Amendment to the Constitution of the United States and Article I, Section 10, of the Missouri Constitution, V. A. M. S., in that it unduly infringes their and other County residents freedom of choice in matters relating to bodily care and health by compelling them to drink fluoridated water against their wills; and that the enforcement of the Ordinance would violate Missouri Statutes relating to the adulteration and misbranding of non-alcoholic drinks. The Circuit Judge held that the County Council had no such authority to take the action; accordingly, entered judgment in favor of the Plaintiff. The Supreme Court of Missouri reversed the decision of the lower court holding that the County Council had express authority to pass the Ordinance and that the exercise of such authority would violate no constitutional rights of the Plaintiffs-Appellants, and that it was not in violation of any of the Statutes of the State of Missouri. Plaintiffs have accordingly appealed to this Court.

ARGUMENT.

The decision of the Supreme Court of Missouri is correct and is supported by the decisions of this Court so that the questions raised on appeal are unsubstantial and warrant no further argument in this Court.

The findings of facts and conclusions set forth in the opinion of the Supreme Court of Missouri clearly show that the Appellee was acting within the police power expressly conferred upon them by the Constitution and laws of the State of Missouri and by the Home Rule Charter for St. Louis County, and that the action taken by the County was for the purpose of protecting the health of the citizens and promoting the public welfare in a manner and to an extent reasonably necessary for the public interests. The record shows and the Supreme Court opinion shows that dental caries among children and tooth decay among adults is one of the most prevalent diseases effecting the human body and that the injection of fluoride into the public water supply to the extent proposed by the County will, in a large measure, alleviate this disease which is widespread in St. Louis County, without any harmful effects upon anyone who drinks such water; that fluoride or minerals which exist naturally in the water supply of many communities throughout the United States and in many foods consumed by human beings; and in particular that fluorides already exist in the public water supply of St. Louis County at approximately 0.5 parts per million gallons of water. At the present time, flourides are being added to the public water supply in practically every state of the union and in the District of Columbia and in many communities in the State of Missouri. The record further shows and the opinion of the Supreme Court further shows that there is a great deal of evidence,

to maintain throughout the distribution system a fluoride concentration of approximately one part fluoride per million gallons of water. The Ordinance recites that the action was taken after a finding that it was the concensus of scientific, medical and dental opinion that the presence of fluorides in drinking water is a deterrent to tooth decay; also finding that there was an inadequate concentration of such chemical in the natural supply of water to the citizens of St. Louis County; and further finding that fluorides could be introduced into the drinking water supply of St. Louis County as a measure to promote the public health and welfare.

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including the opinions of well-qualified experts, that the fluoridation of water as proposed in the Ordinance of the Appellees would result in harm to no one and would have no undesirable effects on birth rate, death rate, elderly or sick individuals or any other persons. As a result of these facts and of various studies and experiments on this subject, the fluoridation of public water supplies has been approved and recommended by the St. Louis Dental Association, the Missouri State Dental Association, the American Dental Association, the American College of Dentists, the Missouri Public Health Association, the American Public Health Association, the Missouri State Department of Health, the U. S. Department of Health, Education and Welfare, the St. Louis Medical Society, the Missouri State Medical Association, the American Medical Association, the St. Louis County Health Department, and the Department of Health for the State of Missouri, as well as numerous other national and state scientific organizations.

Appellants on pages 4 and 5 of their jurisdictional statement cite various decisions of this Court which they contend will support the jurisdiction in this case and on pages 6 through 10, state several questions which they contend raise such Federal questions as will support the jurisdiction of this case in this Court. The Appellees will discuss these questions in this Brief separately in order to establish an orderly procedure herein.

I.

No Federal Question Is Presented as to the Issue as to Whether or Not the County Council of St. Louis County, as the Legislative Body of the County, May Pass an Ordinance Fluoridating the Communal Water Supply Without a Vote of the People of St. Louis County.

The question determined by the Supreme Court of Missouri in regard to the authority of the County Council to pass an Ordinance relating to the public health of persons residing within the entire County including incorporated municipalities, hinged on the determination of that Court as to whether the provision found in the State Constitution, Article VI, Section 18 (c) was the sole authority for the County to exercise such action or whether St. Louis County, as a Home Rule Charter first class county, might exercise the powers in regard to public health pertaining to first class counties generally in the State of Missouri. No issue has heretofore been raised by the Appellants in any of the lower courts as to their denial of the right to vote on the fluoridation measure involving the prohibition found in the Fourteenth Amendment to the Constitution of the United States. In any event, the determination as to whether or not a right to vote in the fluoridation measure, is one of local concern to be determined by the Missouri Courts and not one presenting a Federal question.

It would appear in order to clarify the political status of St. Louis County in view of the contentions of the Appellants. St. Louis County was a classic county of the first class, a political subdivision of the State of Missouri, as provided for under the Constitution and laws of Missouri prior to January 1, 1951. On March 28, 1950, the people of St. Louis County adopted a Home Rule Charter pursuant to the authority granted in the Constitution of Missouri,

Article VI, Section 18 (Set out in full in Appendix A. page 21). Section 18 (a) provides that any county in the state having more than 85,000 inhabitants may frame, adopt and amend a Charter for its own government as provided in said Section 18. Section 18 (b) specifically provides that the Charter must provide for the form of the County government, the number and kind, the matter of selection, the terms of office and salaries of the County officers, and for the "EXERCISE OF ALL POWERS AND DUTIES OF COUNTIES AND COUNTY OFFICERS PRESCRIBED BY THE CONSTITUTION AND THE LAWS OF THE STATE." Section 18 (c) to which the Appellants make reference in their statement of jurisdiction authorized charter counties to provide in their charter for the exercise of certain legislative powers in the part of the County outside of incorporated cities, and further provided that the County might perform services and functions of municipalities and political subdivisions in the County when accepted by a vote of the majority of the qualified electors.

Since the adoption of its Home Rule Charter, the Missouri Courts have consistently held, and settled beyond all peradventure, that St. Louis County, as a constitutionally chartered county may and, in some instances, must exercise all the power and authority of counties of the first class in the state. In **State ex rel. Arthur B. Shepley, Jr. v. Clark R. Gamble,** 365 Mo. 215, 280 S. W. 2d 656 (Supreme Court of Missouri, en banc 1955), the Missouri Court stated l. c. 659:

> "St. Louis County, regardless of its charter, remains a legal subdivision of the state. Article VI, Sections 1 and 18 (a). As such, it is charged with the performance of the state functions just as other counties are. Section 18 (b) . . . expressly requires that the Charter must provide 'for the exercise of all

powers and duties of counties and county officers prescribed by the Constitution and laws of the State."

Thus, as an arm of the state and a political subdivision of the State of Missouri, St. Louis County continued, even after the adoption of its Charter, to perform all those functions which the State might delegate to it through the legislature, but, in addition, by reason of its charter status, was able to perform certain functions and render services in the area of the County outside incorporated municipalities and select the particular officers and departments of the County government which might perform the functions of the State.

In essence, St. Louis County by virtue of its peculiar status, as a Home Rule Charter County, is no longer limited to exercising powers as a first class county, but in addition, it may exercise all powers granted by the Constitution and its Home Rule Charter. Specifically, the Home Rule Charter provided in Article I, Section 2, that the new government of St. Louis County should have all the powers vested by the Constitution and laws of Missouri in county courts, county offices, counties of the first class, etc. Therefore, the Supreme Court of Missouri, when in its opinion in this case, stated that the County Council was and is authorized to enact ordinances tending to enhance the health of the residents of St. Louis County, irrespective of whether they also reside within a municipality, was merely following the law as it had previously established it, and decided the constitutional provision in 18 (c) was not the only method by which a Charter County might exercise legislative power pertaining to public health.

The Supreme Court then found that as a first class county, the county through its legislative body, might exercise such powers, including those relating to public

health, as are granted to first class counties by the state regardless of municipal boundary lines. Following this reasoning, the Supreme Court of Missouri in interpreting its own Constitution found that the limitation contained in Article VI, Section 18 (c) did not apply to the Ordinance in question. However, the Missouri Court found that the power of the Appellees or the legislative body of St. Louis County (which body is elected from districts which include both the incorporated and unincorporated areas of the entire St. Louis County), is not limited to said Section 18 (c), but that the Appellees may also exercise the powers relating to public health imposed upon "any county of the first class." In particular, the Supreme Court found that the Appellees may exercise by Ordinance the police power pertaining to the enhancement of public health in the County granted to "any county of the first class" by Section 192.300, R. S. Mo., 1959 (Appendix J—Appellants' statement as to Jurisdiction) as appropriated by the legislature of Missouri from Article IV, Section 37 of the Constitution of Missouri (Appendix B, page 24).

Clearly, the Plaintiffs-Appellants had, under the State Constitution and laws of the State of Missouri, no right to vote on the fluoridation measure in question here under said Section 18 (c). Then, there seems to be no question presented similar to that found in **Baker v. Carr**, 369 U. S. 186, 82 S. Ct. 691, 7 L. Ed. (2d) 663, where, as we understand the issue involved in that case, there was no question as to the right of the Plaintiffs to vote under the Constitution and laws of the State of Tennessee, but rather a question as to whether, an unquestioned right to vote had been debased by the apportionment statute in effect in that State. The question involved in the instant case is little different than that found in **Attorney General of the State of Michigan v. Lowrey**, 199 U. S. 233, 26 S. Ct. 27, 50 L. Ed. 167, in which the appellants in that case

attacked the validity of a state act creating a new school district upon the grounds among others that "it deprives the school district or municipality of the right of local self-government, guaranteed all municipalities by the Constitution." This Court correctly stated that such question was of no concern since it presented a strictly local question. The same doctrine was recognized in **Kingsley's International Picture Corporation v. Regents of the University of the State of New York**, 360 U. S. 684, 79 S. Ct. 1362, 3 L. Ed. (2d) 1512, when this Court stated: "We accept too, as we must, the construction of the New York Legislature's language which the Court of Appeals has put upon it." In the same case, this Court cited **Albertson v. Millard**, 345 U. S. 242, 73 S. Ct. 600, 97 L. Ed. 983, where the Court again reiterated that the interpretation of the intent of the state legislation is primarily a function of the state authorities, judicial and administrative and that the construction, as given, is binding upon Federal Courts.

In view of the foregoing, it would appear clear and explicit that no issue involving a Federal question appears in this case growing out of the construction of Section 18 (e), Article VI of the Constitution of the State of Missouri or growing out of the contended conflict between Article VI, Section 18 (e) and Section 192.300, V. A. M. S., and therefore there is no permissible ground under which this Court can acquire jurisdiction of the subject matter.

II.

No Substantial Federal Question Is Raised to Support Jurisdiction in This Case by the Contention of the Appellants That the Fluoridation Ordinance Constituted Infringement of Liberties Guaranteed to Them Under Section One of the Fourteenth Amendment to the Constitution of the United States Because Ordinance No. 01480 Is a Valid Exercise of the Police Power of the State of Missouri in the Promotion of the General Health of the Public, Which Power the State Did Not Surrender in Becoming a Member of the Union Under the Constitution of the United States.

Appellants on page 4 of their jurisdictional statement cite three decisions of this Court which they contend will support the jurisdiction in this case as to the question of accepting compulsory fluoridation of drinking water in a public water system. The only one of these cases which is directly applicable is that of **Jacobson v. Massachusetts**, 197 U. S. 11, 25 S. Ct. 358, 49 L. Ed. 643. In this case, Jacobson was convicted for refusing to submit to compulsory small pox vaccination as required by the laws of Massachusetts. An appeal was taken to this Court on the grounds that the statutes of the State of Massachusetts deprived him of liberty without due process of law and denied him equal protection of the laws in violation of the Fourteenth Amendment. This Court sustained the conviction and held (1) that the state was acting under its police power—a power which it did not surrender in becoming a member of the union under the Constitution; (2) that the State statute was enacted to protect the public health and the public safety of the people of Massachusetts and (3) that the Appellant's right to liberty was subject to such action by the State in order to secure the general comfort, health and prosperity of its citizens.

This Court further held that the safety and health of the people of the State are in the first instance for that commonwealth to guard and protect and are matters that do not necessarily concern the national government.

It may be noted that in the Jacobson case there was a direct compulsion upon all citizens of the state to submit their bodies to medical vaccination for the purpose of preventing a widespread disease. In the instant case, the Supreme Court of Missouri has pointed out that there is no direct compulsion on the Appellants or anyone else to drink the water which is offered by the St. Louis County Water Company for sale. Plaintiffs, if they desire, may use the public water supply for washing, cooking, bathing, sprinkling, and other general purposes. They can easily secure drinking water from other sources. There is no substantial evidence in the record that shows Appellants would be greatly inconvenienced by securing their drinking water elsewhere or by other means. Further, it is to be observed, as the Supreme Court of Missouri pointed out, this Court in the Jacobson case said: "If there is any such power in the judiciary to review legislative action in respect of a matter affecting the general welfare, it can only be when that which the legislature has done comes within the rule that, if a statute purporting to have been enacted to protect the public health, the public morals, or the public safety, has no real or substantial relation to those objects, or is, beyond all question, a plain, palpable invasion of rights secured by the fundamental law, it is the duty of the Courts to so adjudge and thereby give effect to the Constitution. * * *" That rule has not been violated in the instant case.

Accordingly, if a police power measure is properly referable to the public health, the Fourteenth Amendment does not deprive a State or its political subdivisions of the

right to preserve order or to protect the health of the people under its police power, and in the exercise of its power, the legislative branch may interfere with and impair the individual liberties of the citizens in a manner and to an extent reasonably necessary to the public interests and the court will not interfere unless the health measure invades fundamental rights or is arbitrary, oppressive or unreasonable. **Chapman v. Shreveport**, 225 La. 859, 74 So. 2d 142, Appl. Dismd. 348 U. S. 892, 75 S. Ct. 216, 99 L. Ed. 701. Such a situation does not exist here.

However, Appellants further contend that their individual rights as citizens of St. Louis County have been violated under the First section of the Fourteenth Amendment to the Constitution of the United States on their theory that the fluoridation measure would be harmful to at least a portion of the population. But, to contravene this allegation, it is only necessary to state that the determination of whether fluoridation would be helpful and in the interest of the people of St. Louis County or harmful to all or to some, remains with the legislative body enacting the ordinance, the St. Louis County Council. Unless the determination of the Council in this regard is capricious and unreasonable the Courts must be bound by that determination. In the instant situation, the Missouri Supreme Court stated in its opinion, l. c. 631: "We again recognize that we are bound by the Council's reasonable determination that the measure will result in benefit to each individual consumer and not in harm. We have held herein that the ordinance does bear a reasonable relation to public health and based upon the Council's conclusion, does tend to enhance the health of the residents of the County." Thus, the factual determination has been made by the Supreme Court of Missouri that the ordinance in question is properly referable to the police power to pro-

mote public health and consequently, no question of law remains in this regard but only one of fact. Is it for this Court to reverse that factual determination as a basis for jurisdiction?

Appellants in this Appeal, as they did in the Supreme Court of Missouri, are attempting to invoke the issue of violation of religious freedoms under the First Amendment to the Constitution as appropriated into the Fourteenth Amendment, although there is nothing in the record to indicate the religious beliefs of any of the parties or the manner in which these beliefs would be violated under the ordinance in question. In any event, this Court has expressly held that the constitutional guarantee of religious freedom has two distinct components. Freedom of religious belief is one that is guaranteed. It is not disturbed here.

The other, the freedom to practice what is dictated by one's religious belief is not unreservedly guaranteed. It is in this latter area that state police power may intervene. A legitimate and reasonable exercise of police power is valid and constitutional even though it interferes with the freedom of a religious group to practice in accord with its religious belief. **Cantwell v. Connecticut**, 310 U. S. 296, 60 S. Ct. 900, 84 L. Ed. 1213; **Hamilton v. Regents of the University of California**, 293 U. S. 245, 55 S. Ct. 197, 79 L. Ed. 343; and **West Virginia State Board of Education v. Barnette**, 319 U. S. 624, 63 S. Ct. 1178, 87 L. Ed. 1628. This court has heretofore had occasion to consider the exact question presented here. In the case of **C. Leon D. Aryan v. John D. Butler, Mayor of the City of San Diego, et al.**, 119 Cal. App. 2d 674, 260 P. 2d 98, cer. den. 347 U. S. 1012, 74 S. Ct. 863, 98 L. Ed. 1135, plaintiff sought to enjoin the City of San Diego from adding sodium fluoride to its public water supply for the purpose of preventing

dental caries in children on the ground that such action was violative of the plaintiff's religious beliefs against the taking of medicine and deprived the plaintiff of his liberty under the Fourteenth Amendment. The State Courts of California denied plaintiff's claim. Thereupon he sought relief by certiorari from this Court, which this Court denied. In at least four other cases, this Court has also had occasion to consider the exact questions presented in this appeal. The latest in which this Court dismissed an appeal was **Birnel v. Town of Fircrest**, 53 Wash. 2d 830, 335 P. 2d 819, 361 U. S. 10, 80 S. Ct. 71, 4 L. Ed. 2d 51 (Washington). As to other appeals dismissed by this Court, see **Chapman v. Shreveport**, 225 La. 859, 74 So. (2d) 142, 348 U. S. 892, 75 S. Ct. 216, 99 L. Ed. 701; and **Kraus v. City of Cleveland**, 163 Ohio St. 559, 127 N. E. 2d 609, 351 U. S. 935, 76 S. Ct. 833, 100 L. Ed. 1463. Certiorari was denied also by this Court in a fluoridation case in **Dowell v. Tulsa**, 273 P. 2d 859, 348 U. S. 912, 75 S. Ct. 292, 99 L. Ed. 715.

Other State Courts, in addition to those cited, have sustained the rights of municipalities to fluoridate their public water supply and have held that such action violates no rights guaranteed to water consumers by the Fourteenth Amendment to the Constitution. Wisconsin—**Froncek v. Milwaukee** (1955), 269 Wisc. 276, 69 N. W. 2d 242; Oregon —**Baer v. Bend**, 206 Oregon 221, 292 P. 2d 134; Washington—**Kaul v. Chehalis** (1954), 45 Wash. 2d 616, 277 P. 2d 352; and Iowa—**Wilson v. City of Council Bluffs, Iowa**, 110 N. W. 2d 569.

III.

No Substantial Federal Question Is Before the Court to Support Jurisdiction as to the Criteria or Standards for the Amount of Fluoride to Be Used in the Drinking Water.

Appellants in their jurisdictional statement, in an effort to support jurisdiction in this Court, state that the ordinance in question in providing that approximately one part fluoride to one million gallons of water is to be added to the water supply, fails to establish a definite criteria or standard for the amount of fluoride to be used in the water in violation of decisions of this Court. The decisions referred to by Appellants, six in number, appear on page 5 of their Statement as to Jurisdiction. In all of the six cases cited by Appellants, complete discretion was placed on an administrative official to determine first whether the law had been violated and further, what constituted a violation. Unlike the ordinance in question here, five of them involved ordinances penal in character. None of these cases are directly applicable to the point raised by the Appellants. In McQuillin's Work on Municipal Corporations, 3rd Ed., Vol. 5, § 15.24, pages 110, 111, is set forth the general rule:

> "An ordinance must be clear, precise, definite and certain in its terms, and an ordinance vague to the extent that its precise meaning cannot be ascertained is invalid although otherwise it is constitutionally valid. The basis for the rule as in the case of the requirement for definiteness and certainty in statutes is a necessity for notice to those affected by the operation and effect of the ordinance and the necessity for such notice is especially strong, of course, where the ordinance is penal in character. Thus an ordinance must be framed in terms sufficiently clear and definite to

> show what it intends to require or prohibit and punish, and its language must be readily understandable by those upon whom it is to operate * * * However, it is well settled that courts will not by construction defeat the purpose and objects intended by an ordinance, if it is sufficiently definite to be understood with reasonable certainty."

The Missouri Courts, in **Fitzgerald v. Thompson**, 238 Mo. App. 519, 184 S. W. 2d 198, 304, adopted the definition for the word "approximately" as found in Webster's International Dictionary, which, as the Court states in that case, defines the word "approximate" to be: "(2) near to exactness; nearly exact; not perfectly accurate." Considering the foregoing rule and considering the record as a whole in regard to the desirable amounts of the fluoride ions to be added to drinking water, it becomes clear that there is no question but that the use of the words "approximately one part per million" fully establishes an understandable criteria and standards for water fluoridation. As the record reflects, there was substantial evidence that there would be no harmful effect from drinking water fluoridated up to two parts per million (Rec. 501) or no toxic effects up to 20 to 50 parts fluorides per million gallons of water (Rec. 505); and that the optimum portion of fluoride to water is considered to be "approximately" one part per million gallons of water. Thus the use of the term "approximately" can be clearly understood by those persons required to execute the ordinance. Further, a reading of the entire fluoridation ordinance quickly demonstrates that as a matter of fact, the fluoridation measure establishes an exact procedure and guide to be followed by both the water company and the St. Louis County Health Department. Section 2 of the ordinance provides for the keeping of accurate records of the amount of fluorine-bearing chemicals to be applied, the quantities of water

treated, and to cause the making of necessary tests as directed by the Health Department. Section 3 provides the duties of the Health Commissioner in this regard, requiring him to make periodic reports to the County Council.

Further criteria or standards that might be needed are not explained by the Respondents and raise no question that need be reviewed by this Court.

IV.

No Federal Question Vesting Jurisdiction in This Court Is Raised Under the Issue That Under Section 386.250, R. S. Mo. 1959, the Public Service Commission Has Exclusive Jurisdiction Over Private Water Companies and Therefore the County Council of St. Louis County Has No Legal Authority to Enact the Legislation in Question, or That the Ordinance in Question Is in Violation of the State Statute, Making It a Criminal Offense to Put Any Fluoride in Any Non-Alcoholic Drink, Section 196.125-196.145, R. S. Mo. 1959.

The foregoing questions raised by the Appellants and suggested to be such as to support jurisdiction in this Court bear no consideration. These questions merely concern the interpretation of the Statutes of Missouri and the fact that the Missouri Supreme Court has found these issues contrary to the view of the Appellants raises no question of due process of law or equal protection within Section One of the Fourteenth Amendment of the United States.

CONCLUSION.

Appellees, therefore, respectfully submit that the Appellants present no substantial question for the decision of this Court and that the judgment and decree of the Su-

preme Court of Missouri should be affirmed. In the alternative, Appellees submit that this Appeal should be dismissed.

Respectfully submitted,

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APPENDIX A.

Article VI, Constitution of Missouri 1945.

Special Charters.

Sec. 18 (a). County government by special charter—Limitation.—Any county having more than 85,000 inhabitants, according to the census of the United States, may frame and adopt and amend a charter for its own government as provided in this article, and upon such adoption shall be a body corporate and politic.

Sec. 18 (b). Provisions required in county charters.—The charter shall provide for its amendment, for the form of the county government, the number, kinds, manner of selection, terms of office and salaries of the county officers, and for the exercise of all powers and duties of counties and county officers prescribed by the Constitution and laws of the state.

Sec. 18 (c). Provisions authorized in county charters—participation by county in government of other local units.—The charter may provide for the vesting and exercise of legislative power pertaining to public health, police and traffic, building construction, and planning and zoning, in the part of the county outside incorporated cities; and it may provide, or authorize its governing body to provide, the terms upon which the county shall perform any of the services and functions of any municipality; or political subdivision in the county, except school districts, when accepted by vote of a majority of the qualified electors voting thereon in the municipality or subdivision, which acceptance may be revoked by like vote.

Sec. 18 (d). Taxation under county charters.—The county shall only impose such taxes as it is authorized to impose by the Constitution or by law.

Sec. 18 (e). Laws affecting charter counties—limitations.—Laws shall be enacted providing for free and open elections in such counties, and laws may be enacted providing the number and salaries of the judicial officers therein as provided by this Constitution and by law, but no law shall provide for any other office or employee of the county or fix the salary of any of its officers or employees.

Sec. 18 (f). Petitions for charter commissions—signatures required—procedure.—Whenever a petition for a commission, signed by qualified electors of the county numbering twenty per cent of the total vote for governor in the county at the last preceding general election, is filed with the county court or other governing body, the officer or body canvassing election returns shall forthwith finally determine the sufficiency thereof and certify the result to the governing body, which shall give immediate written notice of the petition to the circuit and probate judges of the county.

Sec. 18 (g). Charter commission—appointment, number and qualification of members.—Within sixty days thereafter said judges shall appoint a commission to frame the charter, consisting of fourteen freeholders, who shall serve without pay and be equally divided between the two political parties casting the greater number of votes for governor at the last preceding general election.

Sec. 18 (h). Adoption of charter—special election—manner of submission.—The charter framed by the commission shall take effect on the day fixed therein and shall supersede any existing charter or government, if approved by vote of a majority of the qualified electors of the county voting thereon at a special election held on a day fixed by the commission and not less than thirty days after the completion of the charter nor more than one year from the

day of the selection of the commission. The commission may submit for separate vote any parts of the charter, or any alternative sections or articles, and the alternative sections or articles receiving the larger affirmative vote shall prevail if a charter is adopted.

Sec. 18 (i). Notice of special charter election.—The body canvassing election returns shall publish notice of the election at least once a week for at least three weeks in at least two newspapers of general circulation in the county, the last publication to be not more than three nor less than two weeks next preceding the election.

Sec. 18 (j). Certificates of adoption of charter—recordation and deposit—judicial notice.—Duplicate certificates shall be made, setting forth the charter adopted and its ratification, signed by the officer or members of the body canvassing election returns; one of such certified copies shall be deposited in the office of the secretary of state and the other, after being recorded in the records of the county, shall be deposited among the archives of the county and all courts shall take judicial notice thereof. This section shall also apply to any amendment to the charter.

Sec. 18 (k). Amendments of county charters.—All amendments to such charter approved by the voters shall become a part of the charter at the time and under the conditions fixed in the amendment.

Sec. 18 (l). Limitation on resubmission after defeat of charter.—No charter shall be submitted to the electors within the two years next following the election at which a charter was defeated.

APPENDIX B.

Article IV, Sec. 37, Constitution of Missouri 1945.

Public Health and Welfare.

Sec. 37. Department of Public Health and Welfare—duties and powers of General Assembly.—The health and general welfare of the people are matters of primary public concern; and to secure them the general assembly shall establish a department of public health and welfare, and may grant power with respect thereto to counties, cities or other political subdivisions of the state.